



STATE SENATOR

RICH ZIPPERER

TESTIMONY OF SENATOR ZIPPERER REGARDING 2011 SENATE BILL 74

Committee Members:

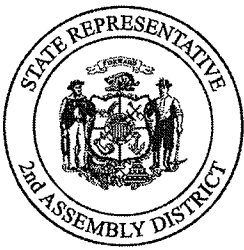
I am pleased to author this legislation that, like other proposals this session, is a move to put Wisconsin's legal climate back in the main stream. This bill improves judicial efficiency and brings fairness to criminal trials by bringing an end to judge shopping in criminal cases.

Under current law, a criminal defendant may for any reason or no reason at all, automatically substitute against a judge, requiring another judge to be assigned to that case. This power of automatic substitution is not afforded to the prosecutor in the case. This provides an unfair ability of one criminal defense attorney to supersede the will of the voters who elected the judge who was substituted against, and it slows down the wheels of justice by forcing the case to be reassigned. In the case of some rural counties, this requires a judge from outside of the county to be brought in to hear the case.

That is why a majority of states and the entire federal court system requires a showing of cause for disqualification. Simply put, duly elected judges should not be substituted against without cause, and this bill will help accomplish that.

Among others, SB 74 is supported by the Milwaukee Police Association and the Wisconsin Coalition Against Sexual Assault, because they understand the inefficient and unfair situation the current law has created.

Before I conclude, it is also important to note what this bill does not change. After the passage of this legislation a judge will still be required to disqualify his or herself under the same criteria for disqualification in existence today. These criteria include circumstances such as relation to the party or a financial interest in the matter. Judges with these conflicts must disqualify themselves from such cases and face significant discipline if they fail to do so.



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Prepared Testimony by Rep. André Jacque before the Senate Committee on Judiciary, Utilities, Commerce, and Government Operations concerning SB 74

Chairman Zipperer and members of the Senate Committee on Judiciary, Utilities, Commerce, and Government Operations,

Thank you for the opportunity to provide testimony in absentia in support of Senate Bill 74, which would provide critical reform to Wisconsin's judicial system.

I am pleased to bring this legislation forward as the lead Assembly author at the request of prosecutors and circuit court judges in my area, including consultation with Brown County DA John Zakowski and extensive discussion at Wisconsin's 4th Judicial District meeting with legislators. This bill is simple: it would eliminate the ability of defense counsel in criminal matters to require the substitution of a judge without showing cause. While most states compel criminal defendants or their attorneys to provide good reason why the duly-elected judge appointed to hear their case cannot be impartial and must be removed, Wisconsin does not, and guarantees criminal defendants the ability to exclude one judge from presiding over their case. In rural counties with one or two circuit court judges, this allows a defendant to require a reserve judge to travel to hear a case, or to effectively pick who the presiding judge will be.

Based on current uneven substitution practices and feedback from judges and prosecutors, there *is* substantial evidence that "judge-shopping" is occurring in criminal cases. This proposal will effectively purge this perception and bolster the integrity and reputation of Wisconsin's criminal justice system. Thank you for your attention to this matter, and I welcome your questions as the bill moves forward.



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.

MEMORANDUM

To: Members, Senate Committee on Judiciary, Utilities, Commerce and Government Operations

From: Attorney Gerry Mowris, Past President
State Bar of Wisconsin

Date: May 3, 2011

Re: Opposition to Senate Bill 74 (Elimination of judicial substitution in criminal cases)

The State Bar of Wisconsin opposes 2011 Senate Bill 74, which would repeal sec. 971.20, thereby eliminating the right of a defendant in criminal proceedings to judicial substitution under that statute. The State Bar has opposed similar restrictions on the substitution of judges for more than 20 years.

More than 15 years ago, the Wisconsin Supreme Court denied the Judicial Conference's request to eliminate the right of judicial substitution in criminal cases and found no "empirical data, anecdotal information or judicial perception to establish that the judge substitution statutes constitute an undue burden on or substantial interference with the judicial branch."

The primary justification for this measure appears to be anecdotes alleging the perception of "judge shopping." Repealing a statute that has served Wisconsin's criminal justice system well for the last 30 years should be based on more than anecdotes. Judicial substitution is not being abused and it is not "judge shopping." Under current law, a defendant may only substitute a judge once and there are no guarantees about who will be assigned to the case instead. Defendants cannot "shop" for a more lenient judge as supporters of the bill have claimed.

Senate Bill 74 will merely increase inefficiencies in our severely strained criminal justice system, ultimately increasing the cost paid by the Wisconsin taxpayer for that system. At a time that Wisconsin is in a state of financial crisis, measures such as SB 74 should not be enacted.

The current system of judicial substitution is quick and efficient compared to its alternative, a motion for disqualification or recusal. Replacing the current substitution system with disqualification motions, hearings on those motions, and more appeals will merely clog our trial and appellate courts with litigation that can be avoided if the existing statute remains undisturbed.

Finally, at a time when there is increasing political concern over the rights of the individual versus the rights of the government, this proposal is difficult to justify. The power of government over the individual is never greater as when it seeks to deprive the individual of his or her liberty. While this bill is based on a stated desire to bolster the integrity and reputation of Wisconsin's criminal justice system, it will have the opposite effect. Judges are substituted to insure a fair trial. Public confidence in the judicial system rests on the public's belief that they will receive a fair trial before an impartial judge. If a person perceives, for whatever reason, that the judge may be less than fair, public confidence in our criminal justice system will be eroded.

The Wisconsin taxpayer cannot afford this measure. It will clog our courts with avoidable litigation, delay the resolution of criminal prosecutions, and is a step backward for the rights of the individual in the face of governmental power. Please do not recommend approval of this bill.